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EFFECTIVE REALIZATION OF THE RIGHT OF SELF-DETERMINATION THROUGH AUTONOMY

Letter dated 28 September 1993 from the Permanent Representative of Liechtenstein to the United Nations addressed to the Secretary-General

Addendum

SELF-DETERMINATION : INFORMAL MEETING OF EXPERTS SCHAAN, LIECHTENSTEIN, 16-18 MARCH, 1993

Summary Report by the Chair

The informal Meeting of Experts was convened by the Government of Liechtenstein, and was held in Schaan, Liechtenstein, from 16 to 18 March 1993. The Government of Liechtenstein appointed Ambassador Claudia Fritsche (Permanent Representative of the Principality of Liechtenstein to the United Nations) and Sir Arthur Watts QC (Adviser to the Government of Liechtenstein) jointly to take the Chair for the Meeting.

The purpose of the Meeting was to assist the Government of Liechtenstein in further developing the ideas in the matter of self-determination advanced initially by His Serene Highness Prince Hans-Adam II, Head of State of the Principality of Liechtenstein, in his statement at the 46th session of the General Assembly in 1991, and further explained in subsequent statements by representatives of Liechtenstein. The Meeting was attended by His Serene Highness and by 46 participants, nominated in their personal capacities by States Members of the United Nations and by States with Observer status, and by certain governmental and non-governmental organisations.

Included in the documents which participants had before them at the Meeting was a Memorandum summarizing the main elements of the suggestions being put forward by Liechtenstein. A copy of that Memorandum is attached.

General Discussion

The Meeting began with a general discussion of issues raised by the Liechtenstein initiative. Overall, it was widely welcomed by participants as a valuable contribution: problems having their roots in the frustrations of distinctive communities within States were recognized to be urgent and important. At the same time, it was recognized that the whole subject was of considerable sensitivity, and that some particular ideas gave rise to certain difficulties.

Several participants noted that 'self-determination' was a complex concept, based on broad notions of democracy and the rights and liberties of individuals.

It was also widely commented that 'self-determination' had primarily developed in the struggle against colonialism, and the eventual attainment of independence in that context. But the concept had evolved, and its meaning in the modern world was more complex. A new generation of self-determination problems had arisen, and the international community had to re-think its approach. Self-determination now sometimes seemed to carry with it the danger of the fragmentation of States; this had to be avoided. The outcome of self-determination was not necessarily independence or border changes.

The Liechtenstein initiative was widely seen as looking towards new law and new structures, and as opening up new developments in application of the principle of self-determination. While still within the broad framework of that principle, and not necessarily excluding the attainment of independence, it was seen as being more related in practice to forms of development not going as far as independence or the break-up of States through secession or otherwise.

It was noted that the Liechtenstein initiative put the emphasis on the development of new structures within the State, and in particular on forms of territorial decentralisation or autonomy (i.e. 'internal' self-determination, as compared with 'external' self-determination, which manifested itself in notions of independence and sovereignty). Several participants accordingly suggested possible advantages in departing from the terminology of self-determination as the defining principle of the Liechtenstein initiative.

While some participants noted the possible danger that the Liechtenstein initiative could be used to limit further developments in self-determination and to defend the status quo, most saw it as without prejudice to that principle, as co-existing with it, and as indeed underpinning it rather than the reverse.

Several participants noted that the questions arose as to whether, once a State had attained independence through the exercise of the right of self-determination, groups within that State had a further right to self-determination for themselves - and then, perhaps, so on ad infinitum. Self-determination needed to be balanced against the need for new States to build their nationhood, and establish their internal stability. It was necessary to guard against the abuse of self-determination through the encouragement of separatism.

The Meeting then turned to a consideration of a number of particular issues.

Concept of 'Community'

There was general support, in principle, for the introduction of a new concept such as 'a community' as the basic unit in terms of which rights of autonomy might be developed. It was helpful in underlining the departure from existing ideas in this field, and was appropriate for the autonomy-related focus of the Liechtenstein initiative rather than for the independence-related focus of existing provisions on self-determination.

The need for a 'community' to be essentially territorially based was generally accepted. But potential difficulties of definition were identified in a number of areas. These included: the relationship with the notion of nationality; the territorial identity of a 'community', and the problems of covering communities which were territorially scattered or fluid, or living in cross-frontier areas; the distinctive qualities which a 'community' should possess; their size; the need for flexibility in definition, to take account of the varying factors which give a community its particular identity; the economic factors which often determine the identity of a community; and the relationship between the definition of a community and the degree of autonomy which it possesses.

The distinction between 'community' on the one hand, and 'minority' and 'indigenous people' on the other, was noted by many participants, as was the partial overlap between the various concepts.

Emphasis in the Liechtenstein initiative on the position of communities was seen by a number of participants as placing it in the context of collective human rights.

General safeguards

Possible safeguards were seen by some participants as really involving the checks and balances which would be necessary to make a new system work effectively. They were the forms through which compromises could be sought. It was acknowledged that some checks and balances would be necessary.

It was noted that 'safeguards' depended on the point of view: a safeguard for the interests of the State was not necessarily a safeguard for the interests of a community within the State.

There were differing views on the need for some safeguard for the territorial integrity of States. Several participants attached importance to such reassurance for States, especially as in other similar contexts there was often such a safeguard to balance provisions tending towards the attainment of independence; but some participants considered that the development of forms of internal autonomy could not, by definition, involve independence or, accordingly, any threat to a State's territorial integrity, and that therefore a safeguard on this point was inappropriate. Others saw emphasis on the protection of territorial integrity as a way of frustrating the right to self-determination through independence.

There was some reluctance to accept any prohibition on communities resorting to force in order to achieve their ends so long as States were still able to use force against communities, even in merely 'law and order' circumstances. Also, force by communities might be justified (e.g. by oppression by State authorities).

Several participants noted that democracy and the proper observance of human rights offered necessary safeguards (or perhaps, pre-conditions) for the effective exercise of the right of self-determination.

Avoidance of foreign interference was suggested as a possible safeguard.

Some participants thought it best to avoid spelling out possible safeguards in detail: details would be best left to be worked out by the parties concerned, in the light of the 'genius of the people'.

Automatic, initial level of autonomy;
Optional, subsequent levels of autonomy

The automatic initial level of autonomy was conceived as comprising the basic rights needed to safeguard and enhance a community's existence, and protect its separate identity within the fabric of the State. The optional subsequent levels of autonomy allowed for progressive additions to the degree to which the community conducted its own affairs.

Autonomy - like sovereignty and independence - was widely acknowledged not to be an 'all or nothing ' concept, but rather one allowing for gradual evolution and variable structures. The flexibility of the Liechtenstein initiative in this respect was widely welcomed.

Autonomy was thought to be a valuable concept, offering a socio-political structure which could help in the search for higher levels of freedom for individuals. But some noted that autonomy could also be divisive, as compared with the development of multicultural States: all groups within such States were in many respects interdependent.

Many participants noted that emphasis on autonomy helpfully avoided, or at least severely limited, problems which could arise with proposals emphasizing the attainment of independence. Many communities would not want independence, but would be satisfied with something considerably less, so long as it allowed sufficient expression for a community's own identity. Autonomy could therefore be an adequate expression of self-determination, without necessarily undermining other forms of self-determination.

The relationship of autonomy and federalism was noted by some participants.

A number of participants thought that a linear approach to various stages of autonomy (with each stage, with the addition of extra elements, leading on to the next stage), could be too rigid: a more flexible, à la carte, approach might be better, allowing communities to suit their progress more exactly to their needs: the reality was likely to be a process of constant dialogue, leading to all kinds of developments in many different directions.

Other pertinent issues

Many participants referred to the need for mechanisms to support any new arrangements which might be introduced, in order to secure their effectiveness in practice.

It was noted, and widely welcomed, that the underlying purpose of the Liechtenstein initiative appeared to be to find ways of avoiding the conflicts which often arose through communities not being allowed adequate means of self-expression. In that context several participants thought that an 'early warning system' was needed, to identify situations in which such conflicts might erupt.

It was noted that civil wars within States were often more a matter of differences between political leaders than of conflicting aspirations of differing groups within States. The real causes of internal conflicts needed study.

Several participants noted that at present there were no adequate mechanisms to help with self-determination issues. Many saw value in establishing new fora, or a new procedural framework, for such issues, including dispute settlement problems which could arise in that context. Mechanisms for coordination were thought useful by some participants.

The establishment of some kind of international advisory centre was suggested, to which Governments and communities could turn for advice on possible options for governmental structures appropriate for the particular self-determination problems they faced.

Some participants warned against the establishment of new intergovernmental institutions, without a very clear idea of what functions they would fulfil: there were already some existing institutions with functions in at least part of this field. Optional mechanisms or processes might offer a more useful way forward; as might the encouragement of private law bodies which could be active in this field.

New York, 20 September 1993